

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. :	2758 of 2020
Date of filing complaint:	01.10.2020
First date of hearing:	30.10.2020
Date of decision :	22.04.2022

Saurabh Chaddha R/o: House no. 871, Sector 10 A, Near HDFC Bank, Gurgaon, Haryana	<b>Complainant</b>
Versus	
M/s MVN Infrastructure Pvt. Ltd. R/o: 17 <sup>th</sup> floor, building no 5, Tower A, Cyber Terraces, DLF Phase III, Gurgaon- 122002	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Varun Chugh (Advocate)	Complainant
Sh. Pawan Upadhyay and Sh. Lokesh Dixit (Advocates)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all

obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No	Heads	Information
1.	Project name and location	"MVN Athens", Sector 5, Sohna, Gurugram
2.	Project area	6.50625 acres
3.	Nature of the project	Affordable Group Housing
4.	DTCP License	49 of 2014 dated 18.06.2014 and valid up to 17.02.2026
5.	Name of the licensee	M.V.N. Infrastructure Pvt. Ltd
6.	RERA Registered/ not registered	<b>Registered</b> <b>GGM/326/58/2019/20 dated 26.03.2019</b>
	RERA Registration valid up to	<b>28.02.2021</b>
7.	Unit no.	Flat no. 605, 6th floor, tower B4 [Annexure B on page no. 17 of the complaint]
8.	Unit measuring (carpet area)	477.3726 sq. ft.+80.5 sq. ft [Annexure B on page no. 17 of the complaint]
9.	Revised area	481.011 sq. ft+ 84.28 sq. ft [Page 49 of the complaint]
10.	Date of allotment	06.02.2015 [Annexure A on page no. 14 of the



		complaint]
11.	Date of execution of builder buyer agreement	Feb 2015 [Annexure B on page no. 15 of the complaint] (No specific date has been mentioned in BBA, but the date of BBA is 19.02.2015 as admitted by the respondent in its reply at page no. 3)
12.	Addendum to Builder buyer agreement	05.10.2016 [Annexure D on page no. 48 of the complaint]
13.	Approval of building plan	05.09.2014 [As per information obtained from the website of DTCP, Haryana]
14.	Environmental Clearance	05.01.2015 [As per information obtained from the planning branch of the authority]
15.	Possession clause	<b>3.1 POSSESSION</b> Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by company and not being in default under any part hereof and flat buyer's agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, stamp duty and registration charges, the company proposes to offer possession of the said flat to the allottee <b>within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance,</b>



		whichever is later, subject to the allottee has executed the flat buyer's agreement. <b>(emphasis supplied)</b>
16.	Due date of possession	05.01.2019 Calculated from the date of approval of environmental clearance as per clause 3.1 of BBA <b>Keeping in view the above orders passed by the DTCP, the period from 05.09.2014 to 16.05.2016 is treated as zero period for the purpose of commencement of project and extension in the period of licence as such the deemed date of commencement shall be deemed as 16.05.2016 and the project was required to be completed on or before May 15,2020.</b> <b>So, the due date comes out to be 15.05.2020</b>
17.	Total sale consideration	Rs.17,58,793/- [As per BBA at page 18 of the complaint] Rs.18,18,124/- [As per statement of account dated 08.02.2019 at page no.57 of the complaint]
18.	Total amount paid by the complainant	Rs.17,39,199/- [As per statement of account dated 08.02.2019 at page no.57 of the complaint]
19.	Payment plan	Time linked payment plan [Page 34 of the complaint]
20.	Occupation Certificate	29.05.2019 [Annexure R5 on page no. 38 of the reply]
21.	Offer of possession	07.06.2019 [Annexure F on page no. 52 of the

complaint]

**B. Facts of the complaint:**

3. That, the flat bearing no. 605 (Sixth Floor), Tower B-4 admeasuring 477.37 sq. ft. + 80.5 sq. ft., along with one two wheeler parking, in the project of the respondent i.e. M/s MVN Infrastructure Pvt. Ltd., known as "MVN Athens Sohna" situated at Sector-05, Sohna, Haryana, was booked by the complainant in the year 2015. That, it is pertinent to mention here that the total cost of the floor is Rs 17,58,793/- only and hence the payment was to be made on the basis of schedule of payment, provided by the respondent.
4. That, thereafter, on 05.01.2015, the complainant entered into a flat buyer's agreement with the respondent, by virtue of which the respondent allotted flat no.605, having carpet area 477.37 sq. ft. + 80.5 sq. ft. located on the sixth floor, Tower B-4, along-with one two wheeler open parking space in the project known as "MVN Athens Sohna" situated at Sector-05, Sohna, Haryana.
5. That, the complainant was greatly influenced by the brochure which depicted that the project will be developed within the defined time frame and with complete satisfaction of the complainant, which led to the purchase of the property in question, by the complainant but the respondent miserably failed to deliver what was promised in the agreement.
6. That, in the said flat buyer's agreement, the respondent had categorically stated that the possession of the said floor would be handed over to the complainant within 48 months from the date



of environment clearance i.e. 05.01.2015. Moreover, the complainant was made to sign an addendum to builder buyer agreement dated 05.10.2016 forcefully, as he was not left with any other option but to get the flat from the respondent as he had already made a substantial payment to the respondent. In the said addendum, the respondent has unilaterally increased the area of flat from 477.37 sq. ft. + 80.5 sq. ft. to 481.01 sq. ft. + 84.28 sq. ft. and increased the price of flat from Rs. 17,58,793/- to Rs. 17,73,780/- and also, he objected it by giving a notice to the builder on dated 06.02.2016.

7. That, the said buyer's agreement and addendum are totally one sided, which impose completely biased terms and conditions upon the complainant, thereby tilting the balance of power in favour of the respondent, which is further manifest from the fact that the delay in handing over the possession by the respondent would attract no penalty, whereas the penalty for failure to take possession would attract holding charges and 15% p.a. penal interest on the unpaid amount of instalment due to the respondent, within a period of 15 days.
8. That, in all these years, the complainant also visited at the site and observed that there are serious qualities issues with respect to the construction carried out by respondent. The respondent has compromised with levels of quality and is guilty of mis-selling. There are various deviations from the initial representations. The respondent marketed to provide possession within due time and also compromised even with the basic features, designs and

quality to save costs. The structure, which has been constructed, on face of it is of extremely poor quality. The construction is totally unplanned, with sub-standard, low grade, defective and despicable construction quality.

9. That, the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 20 months. The complainant was made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site so far.
10. That the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph.
11. That, the complainant, without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent and till date has paid a total sum of Rs 18,64,194/- towards the aforesaid residential flat in the project. Now, there are no more dues towards the complainant, hence the entire payment has already been made.
12. That, the respondent had promised to complete the project by January 2019 i.e 4 years from the date of commencement. The flat buyer's agreement was executed in January 2015 and till date the flat is not handed over to the complainant, which is resulting in extreme kind of mental distress, pain and agony to the complainant.

13. That, however, just to escape from its liability towards the complainant, the respondent in haste, offered the possession of the property in question on 07.06.2019 which in fact was a defective possession as according to the clause 3.7 of flat buyer's agreement "The allottee, before taking possession shall completely satisfy himself regarding the construction, facilities and amenities in respect thereof ", and hence has offered a defective possession.
14. That, the so called possession offered by the respondent on 07.06.2019 is to be considered as a defective offer of possession or no possession at all, in view of the fact that the property is not habitable for the complainant as the complainant visited the site several times on 16.06.2019, 07.07.2019, 08.10.2019, 16.10.2019, 24.10.2019, 23.02.2020 respectively to check the status and also captured photographs and sent e-mails apprising the defects in his flat but every time he got disappointed as the shortcomings like leakage, seepage in bedrooms, crack in toilet tiles etc were never repaired and hence possession of incomplete property can never be offered but the respondent has chosen to offer incomplete possession of the property which goes on to show the malafide intent of the respondent to escape from its legal liability to indemnify the complainant for the delay caused in handing over the possession of the property.
15. That, the complainant vide his email dated 28.06.2019 enquired regarding the partial offer of possession of the property and strongly objected to the aforesaid wrong practice followed by the



- respondent and asked for a complete possession of the property but no heed was paid to his requests.
16. Moreover, the respondent has only adjusted Rs. 16,386/- towards input credit of GST which is far less from what needs to be adjusted and ought to have been paid to the complainant and till date has not been paid to the complainant.
  17. That, the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. Be that as it may, the complainant has lost faith in respondent who has taken the complainant and other home buyers for a ride by not completing the project on time. That, the respondent has not acknowledged the requests of the complainant in regard to the status of the project. There are no signs of completion of the project. The promised amenities are in poor condition.
  18. Also, the respondent has charged external electrification charge @ 34.08/- sq. ft. amounting to Rs. 16,326 + Rs. 2,939 (Tax) = Rs. 19,265/- which is unjust and unfair as the builder cannot levy electrification charges, the same being a part of external development charges which, as per law is not applicable to affordable housing projects, hence is arbitrary and unreasonable and makes the respondent liable to return the said amount along with interest.
  19. Moreover, the complainant received maintenance bill for his unit, for the period 01.02.2020 to 29.02.2020, amounting to Rs. 10,171/- issued by 3rd party namely "Surya Hi-Tech Services Pvt. Ltd" which is totally unjust for the complainant as there is no

agreement between the complainant and Surya Hi-Tech Services Pvt. Ltd with regard to providing maintenance services and which is also in direct conflict with clause 6.1 of the builder buyer agreement which states that “For a period of 5 years from the date of grant of occupation certificate in relation to the project, the maintenance works and services in relation to common areas and facilities of the project shall be provided by the company. After the aforesaid period of 5 years the project shall be transferred to the ‘association of flat owners’ constituted under the Haryana Flat Ownership Act, 1983, which shall thereafter overtake the providing of maintenance services to the project and thereafter the company shall have no further obligation to provide any maintenance services in the project”

**C. Relief sought by the complainant:**

20. The complainant has sought following relief(s):
- i. Direct the respondent to handover the complete possession of the property/floor along with One Two-Wheeler Parking and by making all the repairs as demanded by the respondent to the complainant, in a time bound manner.
  - ii. Direct the respondent to refund additional amount charged by increasing the area of the said flat to the complainant.
  - iii. Direct the respondent to refund GST input credit amount.
  - iv. Direct the respondent to pay interest @ 18% p.a. as interest towards delay in handing over the property in question as per provisions of The Real Estate (Regulation and Development)

Act, 2016 ("RERA") and Haryana Real Estate (Regulation and Development) Rules, 2017 ("HRERA");

- v. Direct the respondent to refund External Electrification Charge @ 34.08/- Sq. Ft. amounting to Rs. 16,326 + Rs. 2,939 (Tax) = Rs. 19,265/- along with Interest.
- vi. Direct the respondent to provide maintenance services to the society in terms of the buyers agreement and not to engage any 3rd party company for maintenance services, with a further direction to declare the monthly maintenance bills raised by Surya Hi-Tech Service Pvt. Ltd as null and void and restraining it from issuing further monthly maintenance bills, in violation to Clause 6.1 of the Builder Buyer Agreement.

**D. Reply by respondent**

21. That the Government of Haryana was pleased to notify on 19.08.2013, "Affordable Group Housing Policy - 2013" under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975. It is respectfully submitted that the policy was issued with the intention of encouraging the planning and completion of 'Group Housing Projects', wherein apartments of 'pre-defined size' were to be made available at 'pre-defined rates' as mentioned in the policy to ensure increased supply of 'Affordable Housing' in the urban housing market to the deserving beneficiaries. A strict criterion for allotments of flat, payment plan, cancellation of allotment has been provided under the policy.

22. That the respondent was granted license no.49 of 2014 dated 18.06.2014, in prescribed form for development of Affordable Group Housing Colony, over the project land. Upon the grant of aforesaid license, the zoning plan was approved vide drawing no. DGTCP-4724 by the competent authority. Thereafter building plans were approved on 05.09.2014. The respondent, thereafter, applied for obtaining prior environmental clearance of the project, vide application dated 29.08.2014, and the same was granted on 05.01.2015, vide letter no. SEIAA/HR/2015/11.
23. That the complainant applied for the allotment of a flat in the above-mentioned project of the respondent vide application dated 26.09.2014. That, as per the applicable rules the concerned government department/agency was to carry out a draw of lots for the allotment of the unit in the project.
24. That, pursuant to the draw of lots held on 04.02.2015, in the presence of a committee headed by the representative of the Deputy Commissioner, Senior Town Planner, DTP, Gurugram, the complainant was allotted flat no. 605, 6<sup>th</sup> floor in block / tower B - 4 having 477.37 sq. ft. along with the two wheeler parking for a total consideration of Rs. 17,58,793 /-. In pursuance of the said allotment, parties entered into flat buyer's agreement dated 19.02.2015.
25. That during the execution of its obligations under the License it had come to the notice of the respondent that certain works were being carried out on the land near the project, for erection of two electrical poles for the installation of High-Tension Lines (HT

Lines). The location of these electrical poles was such that in the event the High-Tension lines were to connect the two poles, the HT Lines would have run through a portion of the project, that too in a manner that it would have come in the way of the buildings that were planned and approved to be constructed over the said project land. This state of affairs could not have been allowed considering the well-being and health related issues of the allottees of the project as any HT Line passing over the edifice of the allottees would have played havoc with their health and life.

26. Under such emergent and pressing circumstances, the respondent approached the Haryana Vidyut Prasaran Nigam Limited ('HVPNL') and other relevant/concerned authorities by way of various correspondences, requests and representations to change the alignment of the HT lines running through the project. The respondent had even met the officials of the Department of Town and Country Planning, Haryana, as license and all necessary approvals had been granted by this department, apprising them of the milieu in which the respondent had got embroiled. But the said requests were not acceded to and the respondent was granted no relief by HVPNL or any other authority. Apparently, there was a direct conflict between the obligations of the respondent and the health and safety of the allottees of the project. Under such circumstances and being an ethical developer who is not driven by profit motive and who always puts the interests and the wellbeing of its buyer at the forefront the respondent decided to take legal recourse in the matter for the benefit and well-being of its buyers.

27. That in this backdrop, the respondent being left with no other alternative filed civil writ petition no.18929 of 2014 before the Hon'ble Punjab and Haryana High Court. Significantly, in the said writ petition, a short reply was filed by Chief Town Planner, Department of Town and Country Planning, acting on behalf of the Director, Town and Country Planning, Haryana. In the reply, while acknowledging the fact that the High Tension Wires would affect the project, it was inter-alia, stated that if the realignment of the proposed electric poles cannot be avoided by the executing agency, the respondent herein could get the zoning plans and building plans revised from the office of said department so as to avoid passing of High Tension Wires over the buildings proposed to be constructed by the respondent.
28. That accordingly, the respondent, under such force majeure circumstance, submitted request for revision of the building plan(s)/zoning plan(s) on 13.07.2015 and the revision was approved provisionally vide memo no.14925 dated 12.08.2015, for the purpose of inviting objections/suggestions. After considering all the objections raised against such provisional approval with to respect to revision of the building plan(s) the revised building plans were approved vide memo no. ZP-981/SD (BS)/2016/9626 dated 16.05.2016. The said fact which stands recorded in the records and order of the competent authority i.e. Director, Town and Country Planning, Haryana. It is pertinent to mention here that the complainant did not submit any objection to the revision of building plan and, as a matter of fact, the

complainant made further payments even after the aforesaid revision of the plan.

29. Thus, it is quite obvious from the above-mentioned facts that the necessity to revise the building plans arose due to circumstances beyond the control of the respondent and in the interest of the allottees which amounted to force majeure conditions and consequently the area of the flat allotted to the complainant had got changed and the towers that were earlier marked alphabetically were then marked numerically.
30. That thereafter, in the writ petition then pending before the Hon'ble High Court, the respondent had submitted that due to the process involving the change and revision of the building plan certain period has elapsed during which the respondent could not continue the development of the project and therefore prayed that such period which was lost during this period in the interregnum be removed from the limited time of completion provided under the policy. Considering the plea of the respondent the Hon'ble High Court disposed off the said writ petition vide order dated 26.07.2017 with a direction thereby granting liberty to the respondent to make a representation before the Department of Town and Country Planning, Haryana in that regard.
31. Accordingly, the respondent submitted its representation and the Department of Town and Country Planning considered the same on merits. It was duly noticed by the Director, Town and Country Planning, Haryana while deciding the representation of the respondent that the project of the respondent had been stalled for



approximately a period of one year and eight months, for reasons beyond the control of the respondent. The department therefore legally ordered to consider the period from 05.09.2014, to 16.05.2016, to be treated as zero period for the purposes of commencement of project and extension in the period of the license. The said order was passed on the basis of the undisputed facts and applicable law as the respondent was prevented from undertaking development works of the said project due to installation of HT Line by HVPNL. It was duly appreciated in the said order that in case the development works were executed by the respondent, as per the original approved building plans, the HT Line would have passed through the constructed area putting the life of the inhabitants at risk. It was also noticed that the Route of wires of HT Line is to be kept as per IS Code. Needless to mention that as per the said direction of the competent authority i.e. The Director General, Town and Country Planning the date of commencement of the project shall be deemed as 16.05.2016 and the project is required to be completed on or before 15.05.2020.

32. That as per the new revised building plan the area of the flat allotted to the complainant increased to 481.011 sq. ft. from the original 477.3726 sq. ft. and total sale consideration was also increased to Rs.17,73,780/- It is further submitted that complainant accepted the aforesaid changes and signed an addendum dated 05.10.2016 to the builder buyer agreement dated 19.02.2015. It is pertinent to mention here that due to the revision in the building plan, the tower numbers in the project were changed from alphabetical to the numerical and a



clarification note dated 02.06.2016 was issued by the respondent in this regard.

33. It is respectfully submitted that the respondent has duly carried out the construction and/or development as per the terms of the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as '1975 Act') and the Rules framed there under. The application dated 03.12.2018 for granting of occupation certificate with respect to the first phase of the project has been duly accepted by the concerned department and occupancy certificate (OC) for the first phase of the project for the towers 5-10 of the project has been granted in 29.05.2019. It is respectfully submitted that the said OC has been granted much prior to the actual date of completion prescribed under the policy i.e. almost one year before the permitted time of completion under the policy.
34. However, due to spread of ongoing COVID-19 pandemic the State Government as well as this Hon'ble Authority have granted various concessions to the Home Buyers as well as the developers. This Hon'ble Authority has specifically extended the completion date of all the projects by 6 months vide its order bearing No.9/3-2020 HARERA/GGM (Admn) dated 26.05.2020. Thereafter, the Government of Haryana (Town and Country Planning Department) has granted a moratorium period of 9 months for various compliances by way of notification no. Misc-1025/2020/13188 dated 28.07.2020.

35. That, the flat was duly inspected by the complainant in the presence of the officials of the respondent and was found to be in excellent condition. That, as per the orders of this Hon'ble Authority the project is now required to be completed on or before 15.11.2020. Therefore, there has been no delay on the part of the respondent and the unit of the complainant has been offered almost one and a half year before time. Despite these facts the complainant has chosen to make false allegations against the respondent.
36. It is respectfully submitted that the occupation certificate of the tower in which the unit of the complainant is situated has already been granted and pursuant to the said OC the respondent has already issued offer of possession vide letter dated 07/06/2019. The said unit has been completed almost one and a half year before the completion date.
37. That the flat is ready in all aspects and respondent have issued several reminders to the complainant for taking physical possession of the unit after clearing all the dues. However, no steps were taken by the complainant contrary to the complainant are raising false and frivolous grounds with a view to arm twist the respondent. It is further submitted that flat has been developed by the respondent as per the agreement between the parties and flat is free from all such defects as alleged by the complainant. Further if complainant feels that there are such defects as alleged by them, respondent is calling them for joint inspection and if such defects are found then respondent is ready to remove them.

38. It is also quite evident that the change in area and price is extremely minor and was only for the reason of the force majeure circumstances. It is further submitted that the revised plan was approved by the buyers, including the complainant who duly signed the addendum accepting the change, and duly authorised and approved by the competent authority. It is respectfully submitted that the addendum was signed subsequent to the objection therefore has no meaning now.
39. The respondent has never charged any maintenance charges from any of the allottees of the flats in the project and is committed to comply with the terms of the affordable housing policy with respect to the maintenance of the project for the period of five years. Only user charges of the allottee and proportionate operating cost of common areas is being charged. The maintenance of all roads, common open spaces, public park, Building Structure, Plant & Machinery and Equipment installed in the project is free from any maintenance charges from the residents/ occupants for a period of 5 years from date of grant of occupation certificate in the complex. It is further submitted that any repair or replacement of the building structure, common areas, lifts, light in common areas, electrical distribution, transformers, DG Sets, water supply, pump room, fire-fighting equipment, internal roads, community hall, anganwadi-cum creche, STP, and other common plants and equipment is being carried out of at the cost of the respondent company and no maintenance charges shall be charged from the user for five years from the date of grant of occupation certificate. Therefore, the

maintenance of the project shall be free of cost for five years from the date of grant of occupation certificate. The allottees are however liable to pay for personal user charges such as power back-up etc. which do not come under the heading of maintenance and are the additional services being provided to the allottees. As far as the nomination of Surya Hi - Tech Services is concerned it is an agency appointed by the respondent to provide the maintenance and operating services of various kind which includes maintenance and operating services of plant, equipment & machinery installed in the project for common use of the residents/occupants, raise bills directly upon the user/residents/occupants for operational & running cost and collect payments thereof and to do all such acts, deeds etc. as may be necessary to operate services in the project to discharge the obligation of the respondent. It is for the respondent to provide the services through itself or through an agency appointed by it who is providing the said services for and on behalf of the respondent. No objection can be raised in this regard which is futile and does not makes any sense.

40. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

41. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that

it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

### **E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

### **E. II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

#### **Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-

compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I. Objection regarding Timely payments:**

42. The respondent has alleged that the complainant having breached the terms and conditions of the agreement and contract by defaulting in making timely payments. Further the above-mentioned contention is supported by the builder buyer agreement executed between both the parties. Clause 2.6 provides that timely payments of the instalments and other charges as stated in the schedule of payment is essence of the agreement.

But the respondent cannot take advantage of this objection of timely payments being himself at wrong firstly and the complainant has already paid more than 90% of the total sale consideration till date. Therefore, the respondent itself failed to complete its contractual and statutory obligations. Moreover, there is no document on file to support the contentions of the respondent regarding delay in timely payments.

**G. Findings regarding relief sought by the complainant:**

**G.1 Direct the respondent to handover the complete possession of the property/floor along with one two-wheeler parking and by making all the repairs as demanded by the respondent to the complainant, in a time bound manner.**

43. The respondent has filed a copy of OC dated 29.05.2019 on page 38 of reply which shows that it has received the OC for unit in

question. The respondent has already offered the possession to the complainant on 07.06.2019.

Occupation certificate is granted by the competent authority to the promoter only after the completion of the building when the civic infrastructure is complete and the six essential services are certified to be complete i.e., water supply, electricity & streetlight, sewerage, stormwater, roads and parks. So, the occupation certificate is a prerequisite for offering possession, but the promoter is under obligation to offer possession of the subject unit as per specifications provided in the buyer's agreement and in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authority. Also, it has been observed by the authority that there are certain cases where even after obtaining the occupation certificate, possession is offered by the promoter but the unit is not complete as per specifications mentioned in the buyer's agreement then in such cases possession shall be deemed to be invalid. Therefore, the authority directs the complainant to take possession after paying outstanding dues, if any.

The complainant has submitted in his complaint that, the so called possession offered by the respondent on 07.06.2019 is to be considered as a defective offer of possession or no possession at all, in view of the fact that the property is not habitable and visited the site several times on 16.06.2019, 07.07.2019, 08.10.2019, 16.10.2019, 24.10.2019, 23.02.2020 respectively to check the status and also clicked photographs and sent e-mails apprising the

defects in his flat but every time he got disappointed as the shortcomings like leakage, seepage in bedrooms, crack in toilet tiles etc were never repaired and hence possession of such property can never be offered but the respondent has chosen to offer possession of the property.

The plea taken by the complainant for not taking possession is not correct as he has been offered possession after obtaining OC from the competent authority by the developer and if there are any workmanship or any other defect in quality or provision of services, the complainant should have brought the matter to the notice of developer under section 14 (3) of the Act of 2016. In case the builder fails to rectify the defects within 30 days, the aggrieved allottee shall be entitled to receive appropriate compensation in the matter as provided in the Act. The allottee should immediately take over possession and may approach before the AO for compensation.

**G.2 Direct the respondent to refund additional amount charged by increasing the area of the said flat to the complainant.**

44. Vide addendum to builder buyer agreement dated 05.10.2016, there was an increase in carpet area from 477.3276 sq. ft. to 481.011 sq. ft. and balcony area from 80.5 sq. ft to 84.28 sq. ft. which resulted in an increase in total sale consideration from Rs.17,58,793/- to Rs.17,73,780/- However, this remain subject to the condition that the units and other components of the carpet area of the project have been constructed in accordance with the plans approved by the competent authorities.



The increase in the carpet area as per approved plans is payable by the allottee.

**G.3 Direct the respondent to refund GST input credit amount.**

45. The complainant is claiming GST input credit details. On the other hand, the respondent has submitted that the Goods and Service tax Act was passed in the parliament on 29th March 2017 and came into effect on 1st July 2017. The buyers, who have made payment after 01.07.2017 shall be entitled to get credit thereof. However, those who have not made payment of instalments before 01.07.2017 are not entitle to the GST benefit, as per law.

In this context the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

*"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly,

respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017.

The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyers of the unit then it is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter. The concerned SGST Commissioner is advised to take necessary action to ensure that the benefit of ITC is passed on to the allottee in future.

**G.4 Direct the respondent to refund External Electrification Charge (@34.08/- sq. ft amounting to Rs.16,326+Rs.2,939(Tax)=Rs. 19,265/- along with interest.**

As per clause 4.3 of the BBA dated 19.02.2015, the clause is reproduced as under:

*The charges for providing external electrification, electric wiring in the Said Flat, firefighting measures / equipment in the common areas as prescribed in the existing firefighting code / regulations and power backup, shall be payable by the Allottee in addition to the basic Total Cost, as prescribed herein. If, however, due to any subsequent legislation / government order or directives or guidelines or if deemed necessary by the Company, additional electrification / fire safety measures are undertaken or in case there is any increase in the external electrification & firefighting charges, then the Allottee shall be liable to pay proportionate*



*charges, as may be determined by the Company in its absolute discretion.*

Keeping in view the above provision of BBA these charges are payable by the allottee.

- G. 5 Direct the respondent to provide maintenance services to the society in terms of the buyers agreement and not to engage any 3 party company for maintenance services, with a further direction to declare the monthly maintenance bills raised by Surya Hi-Tech Service Pvt. Ltd as null and void and restraining it from issuing further monthly maintenance bills, in violation to Clause 6.1 of the Builder Buyer Agreement.**

As bare reading of the BBA dated 19.02.2015 and clause 6, it was stated that

*6.1 For a period of 5 (five) years from the date of grant of occupation certificate in relation to the Project, the maintenance works and services in relation to the common areas and facilities of the Project shall be provided by the Company. After the aforesaid period of 5 (five) years the Project shall be transferred to the 'association of flat owners' (hereinafter referred to as "Association") constituted under the Haryana Flat Ownership Act, 1983, which shall thereafter overtake the providing of the maintenance services to the Project and thereafter the Company shall have no further obligation to provide any maintenance services in the Project.*

As per terms and conditions of BBA dated 19.02.2015 the builder is duty bound to discharge his obligation regarding maintenance works and services in relation to common areas and facility of the project.

- G.6 Direct the respondent to pay interest @ 18% p.a. as interest towards delay in handing over the property in question as per provisions of The Real Estate (Regulation and Development) Act, 2016.**

As per clause 3.1 of the buyer's agreement the possession of the unit was to be handed over to the complainant within a period of 4

years from the date of approval of building plans or grant of environmental clearance whichever is later. However, DTCP has treated the period from 05.09.2014 to 16.05.2016 as zero period for the purpose of commencement of project and extension in the period of license as such the deemed date of commencement shall be deemed as 16.05.2016 and the project was required to be completed on or before 15.05.2020. In this case the offer of possession has been made on 07.06.2019 after obtaining occupation certificate from the DTCP and hence, **no delayed possession charges are made out**. The respondent shall also not charge interest on delayed payment, if any, from the complainant for the period from 05.09.2014 to 16.05.2016 which is treated as zero period by the DTCP.

**H. Directions of the authority:**

46. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondent is directed not to charge interest on delayed payment, if any, from the complainant for the period from 05.09.2014 to 16.05.2016 which is treated as zero period by the DTCP.
- ii. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter



- which is the same rate of interest which the promoter shall be liable to pay the allottee, in case
- iii. The respondent shall not charge holding charges from the complainant at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020. Moreover, the respondent shall not charge anything which is not part of buyer's agreement.
- iv. The respondent is directed to discharge his obligation regarding maintenance works and services in relation to common areas and facility of the project as per sec 4(v) of the policy.
47. Complaint stands disposed of.
48. File be consigned to registry.

V.I -   
(Vijay Kumar Goyal)  
Member

  
(Dr. KK Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.04.2022